

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 3160**

**[WO-300-L13100000.PP0000]**

**RIN 1004-AE37**

**Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order Number 1, Approval of Operations**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final order.

**SUMMARY:** The Bureau of Land Management (BLM) hereby amends its existing Onshore Oil and Gas Order Number 1 (Onshore Order 1) to require the electronic filing (or e-filing) of all Applications for Permit to Drill (APD) and Notices of Staking (NOS). Previously, Onshore Order 1 stated that an “operator must file an APD or any other required documents in the BLM Field Office having jurisdiction over the lands described in the application,” but allowed for e-filing of such documents as an alternative. This change makes e-filing the required method of submission, subject to limited exceptions. The BLM is making this change to improve the efficiency and transparency of the APD and NOS processes.

**DATES:** The final Order is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Steven Wells, Division Chief, Fluid Minerals Division, 202–912–7143 for information regarding the substance of the final Order or information about the BLM’s Fluid Minerals Program. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact the above individuals during normal business hours. The Service is available 24 hours a day, 7 days a week to leave a message or question with the above individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:**

I. Background

II. Discussion of Final Order, Section-by-Section Analysis, and Response to Comments

III. Procedural Matters

**I. Background**

The BLM regulations governing onshore oil and gas operations are found at 43 Code of Federal Regulations (CFR) part 3160, Onshore Oil and Gas Operations. Section 3164.1 provides for the issuance of Onshore Oil and Gas Orders to implement and supplement the regulations found in part 3160. Onshore Order 1 has been in effect since October 21, 1983, and was most recently revised in 2007 (see 72 FR 10308 (March 7, 2007)) as part of a joint effort with the Department of Agriculture and the Forest Service (FS), in response to new requirements imposed under Section 366 of the Energy Policy Act of 2005.

On July 29, 2016, the BLM published in the Federal Register a proposed Order that would revise sections III. A., III. C., III. E., and III. I. in Onshore Order 1. The Order proposed to require e-filing of all APDs and NOSs. The comment period for the proposed Order closed on August 28, 2016. This final Order adopts all of the revisions identified in the proposed Order.

Through this change, the BLM modifies Onshore Order 1 to require operators to submit NOSs and APDs through the e-filing system, Automated Fluid Mineral's Support System (AFMSS II), as opposed to the previous system, which allowed either hardcopy or electronic submission. Under the final Order, the BLM will consider granting waivers to the e-filing requirement for individuals who request a waiver because they would experience hardship if required to e-file (e.g., if an operator is prevented from e-filing or is in a situation that would make e-filing so difficult to perform that it would significantly delay an operator's APD submission).

The change to Onshore Order 1 that the BLM is implementing in this final Order will not affect other provisions of Onshore Order 1 that are not discussed in this preamble or this final rulemaking, including the Onshore Order 1 provisions relating to the roles and responsibilities of the FS that are outlined in the 2007 rule. As a matter of practice, the FS will have the same access to the BLM's e-filing system and the same user privileges as BLM employees to process APDs and NOSs electronically for wells proposed on National Forest Service (NFS) lands.

An APD is a request to drill an oil or gas well on Federal or Indian lands. An operator must have an approved APD prior to drilling. Prior to submitting an APD, an applicant may file an NOS requesting the BLM to conduct an onsite review of an operator's proposed oil and gas drilling project. The purpose of an NOS is to provide the operator with an opportunity to gather information and better address site-specific resource concerns associated with a project while preparing its APD package. Operators are not required to submit an NOS prior to filing an APD.

The BLM has recently experienced a decrease in the number of APDs received due to changes in market conditions. Since 2009, the BLM received an average of about 5,000 APDs per year for wells on Federal and Indian lands, of which Indian lands account for about 16%. In FY 2015, the BLM received approximately 4,500 APDs. From October 1, 2015, through the end of September 2016 (FY 2016), the BLM estimates that it received only approximately 1,600 APDs. In coming years, due to the recent drop in oil prices and persistently low natural gas prices, the BLM conservatively estimates that an average of 3,000 APDs will be submitted per year. The BLM anticipates these market conditions to continue for the near term.

The available data show that use of the BLM's e-filing system for APDs and NOSs is common and broad-based among operators, and therefore is not a novel concept. Specifically, over the last few years, roughly half of the APDs submitted to the BLM

were submitted using the e-filing system (Well Information System, or WIS). The other half of the APDs were submitted in hard copy. More importantly, the data show that the use of e-filing has increased over time, with the rate nearly doubling from 26 percent in FY 2010 to 51 percent in FY 2014. As of 2014, approximately 411 operators had used the BLM's WIS to e-file NOSs, APDs, well completion reports, sundry notices, and other application materials. Those operators represent an estimated 85 percent of the operators that conduct drilling and completion operations on Federal and Indian leases nationwide.

The BLM's WIS system is a web-based application that operators could use to submit permit applications and other types of information electronically over the Internet. This includes APDs and NOSs, but also well completion reports and sundry notices. The WIS system is an extension of the BLM's current Automated Fluid Minerals Support System (AFMSS), which the BLM uses to track various types of oil and gas information on Federal and Indian lands, including the processing of NOSs and APDs.

#### Automated Fluid Minerals Support System II

Since 2013, the BLM has been developing and deploying updates to its Automated Fluid Minerals Support System in order to gain efficiencies for both government and industry users of the system. The updated system, known as AFMSS II, is being implemented based on modules that will manage different types of data for the BLM's oil and gas program, such as NOSs and APDs, well completion reports, sundry notices, and inspection and enforcement-related operations. The NOS/APD module is the first

module developed as part of the update, which phased in beginning in December 2015.

As part of the phase in, the BLM conducted training for its staff and operators in order to understand how to use the new module. The NOS/APD module within AFMSS II replaces that portion of the WIS system that allowed operators to submit NOSs and APDs electronically over the internet. Once all the modules that will manage data from the existing system have been deployed for AFMSS II, the old version of AFMSS will be decommissioned. As of the date of this final Order, the NOS/APD module is fully operational with the NOS/APD component of WIS now phased out. The NOS/APD module is ready to meet the demand of an increase in APD e-filing that is likely to result from this final Order.

#### Efficiency and Transparency

The goal of the AFMSS II system and the amendments to Onshore Order 1 is to improve operational efficiency and transparency in the processing of APDs and NOSs by requiring operators to use BLM's updated e-filing system as the default approach to APD and NOS filing. Although data show that voluntary use of the e-filing system has increased over time, this Order is necessary to move towards 100 percent electronic APD and NOS submission.

This shift to e-filing presents potential advantages to operators, including operators owned by individual Indian tribes<sup>1</sup>, because the new AFMSS II system is expected to streamline the APD and NOS application process. The system will expedite processing and enhance transparency, resulting in savings to both operators and the U.S.

Government by:

- Reducing the number of applications with deficiencies by providing users the ability to identify and correct errors through automatic error notifications generated prior to the submission process;
- Automatically populating data fields based on users' previously submitted information;
- Allowing operators to electronically track the progress of their application throughout the BLM review process; and
- Facilitating the use of pre-approved plans, such as Master Development Plans and Master Leasing Plans that have already been input into the system.

The AFMSS II system was developed in response to the Government Accountability Office's (GAO) and the Department of the Interior Office of the Inspector General's (OIG) recommendations in GAO report 13-572 (GAO-13-572) and OIG report CR-EV-MOA-0003-2013 (Report No. CR-EV-MOA-0003-2013). Both reports recommended that the BLM ensure that all key dates associated with the processing of APDs are

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<sup>1</sup> In some cases, operators are companies owned by individual Indian tribes. Such companies are usually established to produce the minerals owned by the tribe and, thus, are operated for the benefit of the tribe.

completely and accurately entered and retained in AFMSS, and in any new system that replaces AFMSS, to help assess whether the BLM is meeting applicable processing deadlines and identify ways to improve the efficiency of the APD review process. Additionally, the OIG report recommends that the BLM: (1) Develop, implement, enforce, and report performance timelines for APD processing; (2) Develop outcome-based performance measures for the APD process that help enable management to improve productivity; and (3) Ensure that the modifications to AFMSS enable accurate and consistent data entry, effective workflow management, efficient APD processing, and APD tracking at the BLM Field Office level. The NOS/APD module developed for AFMSS II addresses these recommendations from the GAO and OIG.

## **II. Discussion of Final Order, Section-by-Section Analysis, and Response to Comments**

This final order revises existing Onshore Order 1, which primarily supplements 43 CFR 3162.3 and 3162.5. Section 3162.3 covers conduct of operations, section 3162.3-1 covers applications to drill on a lease, section 3162.3-2 covers subsequent well operations, section 3162.3-3 covers other lease operations, and section 3162.3-4 covers well abandonment. Section 3162.5 covers environment and safety obligations.

The BLM received 5 comments on the proposed Order, from trade organizations, members of industry, and non-governmental organizations.



This section of the preamble describes the changes that the BLM is making to three existing provisions of Order 1. The BLM is making only slight modifications to these sections. However, to provide context for the changes, we have included the three complete sections, which are entitled, Where to File an APD, Where to File an NOS, and APD Posting. This Order does not make any changes to these subsections beyond those detailed below.

#### Where to File an APD

The final order modifies subsection III.A. to require operators to file APDs using the BLM's electronic commerce application, AFMSS II, for oil and gas permitting and reporting. Through this revision, the BLM will move toward an electronic submission rate of 100 percent. In the past, the BLM has received a portion of the APDs electronically and a portion in hard copy, which introduced a number of inefficiencies and necessitated multiple records management systems. This process change will help to eliminate those problems. In addition, the BLM believes that requiring submission through the e-filing system will improve processing times, public participation, and transparency. The BLM did not make any changes to this section between the proposed and final Order because it did not receive any comments on section III. A., and the agency did not have any independent reason to make a change as part of the final Order.

#### Where to File an NOS

Likewise, if an operator chooses to file an NOS, final Section III.C. requires operators to file NOSs using the BLM's e-filing system, the APD module of AFMSS II, for oil and gas permitting and reporting. As with APDs, receiving a portion of the NOSs electronically and a portion in hard copy introduced a number of inefficiencies that necessitated multiple records management systems. The BLM hopes that moving towards a 100-percent electronic submission rate for NOSs will eliminate those inefficiencies.

The BLM received one comment on section III.C. that suggested that the BLM increase the time allowed for operators to submit an APD after completing an on-site inspection for an associated NOS. Under the existing requirements of section III.C. of Order 1, if an operator elects to submit an NOS prior to submitting an APD and conducts an on-site inspection based on the NOS, the operator must submit the APD associated with that NOS within 60 days after conducting the onsite inspection. Failure to submit the APD within 60 days of the onsite inspection will result in the NOS being returned to the operator. The commenter recommended extending this timeframe from 60 days to 90 days, because previous analyses conducted by the commenter indicated that 60 days did not afford enough time to complete the APD submission process. This comment is outside the scope of the revisions to Order 1, which pertain only to the e-filing of APDs and NOSs.

#### APD Posting

Section III.E.1. of the pre-existing Onshore Order 1 already required the BLM to post information about the APD or NOS in an area of the local BLM Field Office that is readily accessible to the public. The pre-existing section III.E.1 also called for that information to be posted on the Internet when possible, though it was not required. Some offices were already posting information about APDs and NOSs on their local BLM Field Office Web sites. Final section III.E.1. of the final Order continues to require the BLM to post information about the APD or NOS in a publicly accessible area of the local BLM Field Office having jurisdiction. Final section III.E.1., also provides that the BLM will post information about the APD or NOS for Federal oil and gas leases on the Internet. This change will increase consistency, transparency, and efficiency for both operators who file APD submissions and the public. The information that the BLM posts online about APDs and NOSs will be consistent with what is already identified in 43 CFR 3162.3-1(g) and will not conflict with the BLM's statutory obligations to protect confidential business information.

In accordance with 43 CFR 3162.3-1(g), information that will be posted online about APDs and NOSs includes: the company/operator name; the well name/number; and the well location described to the nearest quarter-quarter section (40 acres), or similar land description in the case of lands described by metes and bounds, or maps showing the affected lands and the location of all tracts to be leased, and of all leases already issued in the general area. Where the inclusion of maps in such posting is not practicable, the BLM provides maps of the affected lands available to the public for review. This posting

requirement only applies to APDs or NOSs proposing to drill into and produce Federal minerals. The posting requirement derives from the Mineral Leasing Act, and does not apply to APDs or NOSs for Indian minerals, which are not made publicly available.

The BLM received one comment on section III.E.1. The commenter provided a list of information that it believes the BLM should make publicly available on the Internet:

Waiver applications and approvals for the e-filing requirement; APD and Master Development Plan packages (in their entirety); Geographical Information Systems data for each APD; well completion or recompletion reports; sundry notices; and a variety of other information related to the BLM's oil and gas program. Furthermore, the commenter recommended that a public portal be set up in AFMSS II to facilitate posting of this information.

The BLM did not make a change in response to this comment because it is beyond the scope of the proposed amendments to the Order.

#### Waiver from Electronic Submissions

Section III.E.1. of the pre-existing Onshore Order 1 already required the BLM to post information about the APD or NOS in an area of the local BLM Field Office that was readily accessible to the public. The pre-existing section III.E.1 also called for that information to be posted on the Internet when possible, though it was not required.

Consequently, some BLM Field Offices were already posting information about APDs and NOSs on their local BLM Field Office Web sites. Section III.I. is a new section that

allows operators to request a waiver from the requirements in sections III.A. and III.C. of this Order. This section is different from section X., which addresses the requirements for requesting a variance from this Order. Unlike a variance from the other provisions or standards of Order 1, a waiver under this section is limited to the means of submission of an APD (electronic or hardcopy). A waiver under section III.I. is also different from a waiver under section XI., which addresses lease stipulations. Unlike a waiver from the requirement(s) of a lease stipulation, a waiver under this Order is not a permanent exemption from the BLM's requirement to file applications electronically.

When submitting a waiver request under section III.I, the applicant must explain what prevents them from using the e-filing system, plans for complying with the Order's electronic submission requirement in the future, and a timeframe for compliance, all of which is subject to BLM approval. If the applicant would like the waiver to apply to a particular set of APDs or NOSs, then the request must identify the APDs or NOSs to which the waiver request applies. Otherwise, the waiver would apply to all submissions made during the compliance timeframe identified as part of the BLM's approval. The BLM will not consider an APD or NOS that the operator did not submit through the e-filing system, unless the BLM approves a waiver from the e-filing requirement under section III.I.

#### Changes to Section III.I - Waiver from Electronic Submissions

As part of the final Order, the BLM made four changes to this section in response to comments and additional internal reviews, all of which are discussed in the following paragraphs. Two changes are worth noting at the outset. First, in addition to the proposed Order's requirement to explain what prevents an operator from using the e-filing system, the final Order now also requires operators to identify what their plans are for complying with the electronic submission requirement in the future, and a timeframe for achieving compliance. Second, recognizing that it would be helpful to provide operators time after the effective date of the Order to determine whether or not they need to submit a waiver request, the BLM has delayed the compliance date for the electronic submission requirement in this Order by 30 days. During the interim period, APDs and NOSs may be submitted using existing procedures.

The BLM received a few substantive comments on the waiver section of the proposed Order. One commenter disagreed with the need for operators to make a waiver request for every APD or NOS they file, particularly if the operator was granted a waiver from a prior request. The commenter said chances are that the same circumstances will exist with subsequent APD and NOS waiver requests. The commenter recommended that after the BLM grants a waiver, then that waiver needs to remain in force until no longer needed. The BLM did not entirely accept the commenter's recommendation because it would inject needless uncertainty as to when the applicant will start to use the electronic system. Such a provision would run counter to the BLM's efforts to bring efficiency and modernization to its permitting process. The BLM recognizes that an applicant may need

to request a waiver for multiple APDs or NOSs, which is why a waiver request applies to all applications identified in the waiver request. However, the BLM also recognizes that there could be instances when not all APDs and NOSs could be identified at the time an applicant submits a waiver request. Therefore, the BLM modified this section of the final Order. Unlike the proposed Order, which required that the waiver request identify all covered applications, the final Order makes this an option for the applicant. If an applicant does not identify any specific APDs or NOSs in their waiver request, then the waiver request will apply to all submissions made by the applicant until such time as the applicant is able to come into compliance with the electronic submission requirement. The timeframe required to come into compliance is subject to BLM review as part of the waiver approval process, which addresses the BLM's concerns about open-ended waiver approvals. The options provided through this modification are expected to help eliminate delays associated with submitting multiple waiver applications.

Another commenter stated that the Order should define the term "hardship" in order to promote consistency in the application of the waiver provision across BLM Field Offices and limit the amount of unwarranted waiver approvals. The commenter suggested that the BLM adopt language from the proposed Waste Prevention, Production Subject to Royalties, and Resource Conservation rule (Waste Prevention rule) (81 FR 6616) that states that an exemption will be approved if "compliance with this requirement would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease."

The BLM did not make a change in response to the commenter's recommendation. The language cited from the proposed Waste Prevention rule, which also appears in the final Waste Prevention rule, (see 81 FR 83008 (November 18, 2016)), is meant to address circumstances in which new BLM requirements are being applied to existing well operations. In the case of these revisions to Order 1, the electronic submission requirement pertains to applications of wells not yet drilled. Moreover, we do not believe an electronic submission requirement under this rulemaking will deter an operator from deciding to drill a well or group of wells.

However, we do believe there are conditions or circumstances that may prevent an operator from e-filing or would make e-filing so difficult to perform that it would significantly delay an operator's APD submission. For example, an operator could encounter technical problems, such as network or operating system failures, that are delaying or preventing use of the e-filing system. The BLM would evaluate such a case, and the circumstances associated with it, and determine whether it qualifies as a hardship. As previously stated in the proposed Order, however, the BLM cannot conceive of every scenario that may qualify as a hardship, which is why the Order's criteria are broad.

#### Miscellaneous Comments

The BLM received several comments expressing concern with AFMSS II's current state of implementation, noting the need for more industry training and correction of issues



experienced by some users. The commenters stated that the technical problems being experienced are not necessarily significant, but are an indication that the system is not yet fully operational. While these commenters are supportive of AFMSS II and do not object to 100 percent e-filing of APDs and NOSs, they believe there is too much at stake (additional delays in approval of drilling permits) to make the use of AFMSS II a requirement right now. The commenters recommended that the BLM should transition the implementation of the APD and NOS e-filing requirement through AFMSS II for at least one year to allow for more agency staff and end-user training and until all technical flaws have been resolved.

The BLM assessed whether the technical problems identified by the commenters related to the functionality of the system, and determined that the cases were instead related to user error rather than system error. After receiving this comment, the BLM contacted its field offices and none reported having this issue with operators under their jurisdiction. A revision to the final Order was not made in response to this comment.

With regard to the commenter's recommendation to phase in the requirement to use the e-filing system, the BLM has in fact phased in AMFSS II over the past year and conducted numerous training for operators and BLM staff. The following table illustrates the steps taken to phase out the operation of the previous electronic permitting system, WIS, and phase in AFMSS II.

<b>WIS Phase-out Schedule</b>
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<b>BLM Office Transitioned out of WIS</b>	<b>Dates</b>
Farmington, Vernal, Dickinson, Meeker, Grand Junction, Pinedale, Miles City, Great Falls	Jan - Feb 2016
Durango, Canon City, Roswell, Buffalo, Newcastle, Moab, Price, Kemmerer, Salt Lake, Rawlins, Lander, Rock Springs, Anchorage, Milwaukee, Jackson, Casper, Worland, Tulsa, Bakersfield, Reno	Apr - May 2016
Carlsbad/Hobbs	May - Jun 2016

As noted in the proposed Order, the BLM has already provided training opportunities to its staff and to operators on how to use the APD module for AFMSS II. The following table outlines when that training was provided:

<b>Completed Training Sessions</b>		
<b>Location</b>	<b>Dates</b>	<b>Operator/Agent Participation</b>
Operator WebEx: BLM National Training Center	Dec 2015	Over 110 operators trained/47 companies
BLM Offices	Jan-May 2016	Over 230 BLM employees trained
Operator WebEx: BLM National Operations Center	Mar-May 2016	Over 150 operators trained

Because this training captured only a specific group of individuals, the BLM also provides permanent training materials for external users that are available at all times.

Operators may access materials at:

<http://www.ntc.blm.gov/krc/viewresource.php?courseID=869>. In addition, the BLM will provide one-on-one training (delivered through Webex, demonstrations, or classroom training) whenever requested. The BLM has provided ample opportunities for AFMSS II training and will continue to do so. Therefore, the BLM did not make changes to the Order in response to this comment.

One commenter expressed frustration with a limitation in the BLM's electronic system for paying APD fees. If an operator prefers to make payments electronically and not by check to the BLM, then operators must make their payments through pay.gov. After making a payment, the operator receives a receipt number that is generated and must be entered into AFMSS II when an APD is submitted. AFMSS II will not accept an APD unless the receipt number is entered into the system. The problem encountered when making electronic payments is that pay.gov is currently able to accept credit card payments only. A \$24,999 daily limit is placed on payments made to the Federal Government using a credit card. At a cost of \$9,500 per APD, operators are able to pay the fee for only two APDs per day. This could present a delay for operators that typically submit APDs in bulk – 20 to 50 APDs in some cases. The commenter recommended that the BLM provide a means to accept other forms of payment commonly used by industry, in particular Automated Clearing House (ACH) payments.

The BLM recognizes this as a valid concern, but it cannot address this issue in this rulemaking. However, we are in the process of evaluating how our current billing systems can be modified to accept ACH payments through pay.gov.

### **III. Procedural Matters**

#### **Considerations**

The final Order requires that all operators e-file NOSs and APDs. As a practical matter, however, it will have a greater impact on operators that do not currently use the BLM's e-filing system, as these changes do not alter the requirements related to the content of an APD or NOS. Thus, operators that already use the e-filing system will likely continue to use the system, regardless of the Order, and therefore will not be impacted by the changes.

The requirements are estimated to pose relatively small compliance costs (see discussion in the Affected Entities section) associated with administrative compliance and access to the BLM's e-filing system. In particular, operators that have not purchased access to the Internet or cannot access the Internet due to the remoteness of their location are likely to have to hire a permit agent to e-file their APDs, acquire Internet access depending on the coverage and the availability of service providers, or find another work-around solution. The requirements may also result in cost savings to impacted operators by reducing the amount of time spent correcting deficiencies in APDs. The filing of APDs through the modernized AFMSS II is expected to reduce the number of APD submissions that have deficiencies, and reduce the time it takes operators to correct any deficiencies that occur. Reduced APD processing times will benefit impacted operators in that they will be able to commence drilling and develop the mineral resources sooner. On Indian lands, this will benefit tribes and Indian allottees since they are the direct recipients of the royalties generated from the minerals they own.

There will also be improved transparency during the application and review process for APDs that are e-filed. With the transition to AFMSS II, the operator is able to check the status of the APD, and the public is able to find and access information, all in one online location. Until all operators are able to e-file, the BLM will continue to maintain hard copy records for APDs submitted in hard copy, consistent with records management and retention requirements.

### Affected Entities

All entities involved in the exploration and production of crude oil and natural gas resources on Federal and Indian leases and that submit APDs or NOSs after the effective date of the final Order will be subject to its requirements.

We estimate that the amendments will impact about 484 operators,<sup>2</sup> and that these operators might experience a small increase in administrative costs associated with submitting an APD and NOS to the BLM through the new APD module, due to the newness of the system. Operators that comply by submitting a waiver request that is accepted by the BLM might also experience a small increase in costs associated with preparing the waiver request. We estimate the annual average costs per operator to be approximately \$3,920 per operator during the Order's initial implementation period; however, we expect those costs to decrease quickly over time as operators become familiar with the new AFMSS II. In total, we estimate that the amendments might pose

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<sup>2</sup> We examined AFMSS data over a 5-year period (from 2008 to 2012) and found that there were 484 operators that completed wells on Federal and Indian leases. We believe that this pool of operators is a good basis for an estimate about the entities that are likely to file APDs in the future and are, therefore, subject to the requirements.

annual administrative costs of \$2.2 million (about \$1.9 million per year to the industry and \$315,000 per year to the BLM) during the initial phases. We believe this is a generous estimate of costs given the relatively high proportion of APDs already submitted using BLM's existing e-filing systems.

In addition, we estimate that the amendments will pose additional costs for those operators that currently do not use the BLM's e-filing system. Specifically, those 73 entities<sup>3</sup> might face additional compliance costs of \$1,200 per operator per year for Internet access, using the conservative assumption that they do not already have such access. In total, these compliance costs could be about \$90,000 per year for all 73 affected operators. The increased e-filing rates that the BLM has observed during the rollout of the AFMSS II APD module suggest, however, that some of these operators would choose to e-file even without the Order.

We estimate that the amendments will also benefit operators, since operators are expected to receive cost savings from more expedited APD processing. We estimate that submitting an APD via the e-filing system rather than in hard-copy will reduce processing time by 27 percent or 60 days. Furthermore, we estimate the cost savings to the operator of that increased efficiency to be \$6,195 per APD. Given that the Order will

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<sup>3</sup> According to BLM records, as of 2014, there were approximately 411 WIS users, representing 85 percent of the operators that would be subject to the requirements. By extension, we estimate that there are 73 entities that did not use WIS, representing 15 percent of the operators that would be subject to the requirements. These 73 entities were not users of the e-filing system and will be most impacted by the Order.

impact about 1,500 APDs per year, we estimate that the total cost savings could be about \$9.3 million per year.

Together, the total benefits are expected to exceed the total costs, and the Order is expected to result in total cost savings of about \$7 million per year on aggregate. We expect these aggregate benefits to translate to individual operators. To illustrate, even if we assume an individual operator incurs costs as a result of the amendments because they do not currently use BLM's existing e-filing system and have to learn the new system, such an operator would still be expected to receive a net cost savings on a per-APD basis, given that the cost savings will exceed the combined administrative and other compliance costs. On a per APD basis, we expect increased costs of \$1,716 per year – \$516 in administrative burden/compliance costs, plus \$1,200 in other compliance costs. Those costs are expected to be offset, however, by cost savings of \$6,195 per APD. Therefore, on net, an operator submitting one APD per year would be expected to realize a net reduction in costs of \$4,479 (\$6,195 minus \$1,716). That expected net benefit would increase as an operator's familiarity with the new e-filing system increases, as administrative costs would be reduced by such familiarity.

As noted elsewhere in the preamble, some operators are owned by individual Indian tribes. Those operators typically develop the minerals owned by and for the benefit of the tribe. We expect the impacts and benefits of these Order revisions to apply to these operators to the same extent and in the same manner as to other entities operating on

Federal or Indian lands. On net, we anticipate that the benefits of permitting-time efficiencies associated with 100% e-filing, will significantly outweigh any costs, especially as operators become more familiar with AFMSS II.

#### Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

#### Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act



The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (see 5 U.S.C. 601 – 612). Congress enacted the RFA to ensure that government regulations do not unnecessarily or disproportionately burden small entities. Small entities include small businesses, small governmental jurisdictions, and small not-for-profit enterprises.

The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act and those size standards can be found in 13 CFR 121.201. The BLM reviewed the SBA classifications and found that the SBA specifies different size standards for potentially affected industries. The SBA defines a small business in the crude petroleum and natural gas extraction industry (North American Industry Classification System or NAICS code 211111) as one with 1,250 or fewer employees. However, for the natural gas liquid extraction industry (NAICS code 211112), it defines a small business as one with 750 or fewer employees.

The BLM reviewed the SBA size standards for small businesses and the number of entities fitting those size standards as reported by the U.S. Census Bureau in the 2012 Economic Census. The data show the number of firms with fewer than 100 employees

and those with 100 employees or more (well below the SBA size standards for the respective industries). According to the available data, over 95% and 91% of firms in the crude petroleum and natural gas extraction industry and the natural gas liquid extraction industry, respectively, have fewer than 100 employees. Therefore, we would expect that an even higher percentage of firms will be considered small according to the SBA size standards. Thus, based on the available information, the BLM believes that the vast majority of potentially affected entities will meet the SBA small business definition.

We examined the potential impacts of the final Order and determined that up to 484 small entities will be subject to the Order's requirements and could face administrative burdens of about \$3,920 per entity per year. In addition, up to 73 small entities could face other compliance costs of \$1,200 per entity per year. However, we estimate that the administrative and other compliance costs will be offset as a result of improved APD processing times. We estimate that cost savings from faster APD processing could be \$6,195 per APD. Moreover, we expect that the administrative burdens of the final Order will lessen over time as operators become more familiar with the BLM's new e-filing system.

Based on this review, we have determined that, although the revisions to the Order will impact a substantial number of small entities, it will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

This Order is also not a major rule under 5 U.S.C. 804(2) of the RFA, as amended by the SBREFA. This Order will not have an annual effect on the economy of \$100 million or more. In fact, the BLM estimates that the benefits will exceed the costs, and that the rulemaking could result in net savings of \$7 million per year. Similarly, the revisions to the Order will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, tribal, or local government agencies, or geographic regions, nor do the revisions have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The revisions to the Order are administrative in nature and only affect the method for submitting APDs and NOSs. The BLM prepared an economic threshold analysis as part of the record, which is available for review.

#### Unfunded Mandates Reform Act

Under the Unfunded Mandates Reform Act (UMRA), agencies must prepare a written statement about benefits and costs before issuing a proposed or final rule that may result in aggregate expenditure by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year.

The revisions to the Order do not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector, in any one year. Thus, the revisions to the Order are

also not subject to the requirements of sections 202 or 205 of UMRA. This Order is also not subject to the requirements of section 203 of UMRA because the revisions contain no regulatory requirements that might significantly or uniquely affect small governments, because the revisions contain no requirements that apply to such governments, nor do they impose obligations on them.

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

In accordance with Executive Order 12630, the BLM has determined that the revisions to the Order will not have significant takings implications. The revisions to the Order are not a governmental action capable of interfering with constitutionally protected property rights. Therefore, the revisions to the Order will not cause a taking of private property or require a takings implication assessment under the Executive Order.

Executive Order 13132, Federalism

The revisions to the Order will not have federalism implications. The revisions will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, a Federalism Assessment is not required.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

The BLM evaluated possible effects of the revisions to the Order on federally recognized Indian tribes. Since the BLM approves proposed operations on all Indian onshore oil and gas leases (other than those of the Osage Tribe), the Order has the potential to affect Indian tribes, particularly those tribes with tribally-owned and -operated oil and gas drilling or exploration companies, which currently submit APDs and/or NOSs.

In conformance with the Secretary's policy on tribal consultation, the BLM extended an invitation to consult on the proposed Order to affected tribes, including tribes that either: (i) Own an oil and gas company; or (ii) Own minerals for which the BLM has recently received an APD. Over the years, oil and gas development on Indian and allotted lands has been focused in Colorado, Montana, New Mexico, North Dakota, Oklahoma, Texas, and Utah. Based on BLM records, the BLM anticipates that there are nearly 40 tribes for which the BLM has received or will foreseeably receive APDs or NOSs in connection with the development of tribal or allotted mineral resources. In advance of issuing the proposed Order, the BLM sent letters to these 40 tribes extending an invitation to consult on this rulemaking. When the BLM published the proposed Order, BLM also sent letters of invitation to consult to the larger group of tribes who own minerals, but do not play a direct role in the development of those resources. The BLM received one comment from a tribe recommending that the BLM consider creating a similar e-filing system for the tribes for the development of tribal or allotted mineral resources. The current e-filing system is not restricted to the filing of APDs on Federal lands. The system also allows for the submission of APDs on Tribal or allotted lands. Therefore, there already is a

system in place to do what the tribe requested. Multiple attempts were made to contact the Tribal representative, but were unsuccessful.

#### Executive Order 12988, Civil Justice Reform

This Order complies with the requirements of Executive Order 12988. Specifically, the revisions to the Order do not unduly burden the Federal court system and meet the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The BLM has reviewed the Order to eliminate drafting errors and ambiguity and the Order has been written to minimize litigation and provide clear legal standards.

#### Paperwork Reduction Act of 1995

##### Overview

The Paperwork Reduction Act (PRA)<sup>4</sup> provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. Collections of information include requests and requirements that an individual, partnership, or corporation obtain information, and report it to a Federal agency. See 44 U.S.C. 3502(3); 5 CFR 1320.3(c) and (k).

This Order contains information collection activities that require approval by the OMB under the PRA. The BLM included an information collection request in the proposed

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<sup>4</sup> 44 U.S.C. 3501 – 3521.

Order. OMB has approved the information collection for the final Order under control number 1004-0213.

The BLM plans to seek OMB approval to incorporate the burdens of this Order into control number 1004-0137 after this Order becomes effective. For reference, the current burdens for control number 1004-0137 (920,464 hours and \$32.5 million in non-hour costs) can be viewed at <http://www.reginfo.gov/public/>. After the Order goes into effect, the BLM intends to ask OMB to combine the requirements and burdens of the Order with control number 1004-0137.

#### Summary of Information Collection Requirements

- Title: Approval of Operations (43 CFR Part 3160).
- Forms:
  - Form 3160-3, Application for Permit to Drill or Reenter; and
  - Sample Format for Notice of Staking (Attachment 1 to 2007 Onshore Order 1, 72 FR at 10338).
- OMB Control Number: 1004-0213.
- Description of Respondents: Holders of Federal and Indian (except Osage Tribe) oil and gas leases.
- Respondents' Obligation: Required to obtain or retain a benefit.
- Frequency of Collection: On occasion.

- Abstract: The Order will improve the efficiency and transparency of the APD and NOS processes via e-filing, and provide for waivers from e-filing when appropriate.
- Estimated Number of Responses: 3,450 responses.
- Estimated Total Annual Burden Hours: 29,400 hours.

Compliance with the new collection of information is required to obtain or retain a benefit for the operators of Federal and Indian onshore oil and gas leases, or units or communitization agreements that include Federal and Indian leases (except on the Osage Reservation or the Crow Reservation, or in certain other areas). The frequency of the collection is “on occasion.”

#### Discussion of the Collection Activities

APDs: As revised here, section III.A. of Onshore Order 1 requires an operator to file an APD and associated documents using the BLM’s electronic commerce application for oil and gas permitting and reporting.

NOSs: Section III.C. of Onshore Order 1 continues to provide that an NOS may be submitted voluntarily. Section III.C. also requires an operator who chooses to file an NOS to use the BLM’s electronic commerce application for oil and gas permitting and reporting. Except for the new e-filing requirement, this is an existing collection in use without a control number. The purpose of submitting an NOS is to provide an operator



an opportunity to gather information and better address site-specific resource concerns associated with a project while preparing an APD package.

**Waiver Requests:** Section III.I. is a new provision that allows operators to request a waiver from the requirements in final sections III.A. and III.C. The request must be supported by an explanation of why the operator is not able to use the e-filing system, the operator's plans for complying with the electronic submission requirement, and a timeframe for achieving compliance. If the operator would like the waiver to apply to a particular set of APDs or NOSs, then the request must identify the APDs or NOSs to which the waiver applies. If the request does not specify a particular set of APDs or NOSs, the waiver will apply to all submissions made by the operator during the compliance timeframe included as part of the BLM's waiver approval. In those exceptional cases, the BLM will review the operator's request and determine whether a waiver allowing the operator to submit hard copies is warranted.

Between the proposed and the final Order, the BLM added requirements for operators to submit their plans for complying with the electronic submission requirement and a timeframe for achieving compliance, both of which are in addition to the requirement from the proposed Order for operators to explain why they are unable to use the e-filing system. In the final Order, the BLM is also providing an option for operators to request that its waiver approval apply to a specific set of APDs or NOSs. The operator's waiver

request would need to identify which APDs or NOSs that the BLM's approval would apply.

As previously discussed, the BLM made these changes in response to a commenter's recommendation that after the Bureau grants a waiver, that waiver needs to remain in force until no longer needed. The BLM did not accept the commenter's recommended change because it would inject needless uncertainty as to when the applicant will start to use the electronic system and would run counter to the Bureau's efforts to bring efficiency and modernization to its permitting process. However, the BLM also recognizes that there could be instances when not all APDs and NOSs could be identified at the time an applicant submits a waiver request, which could lead to the operator submitting another waiver request at a later time if they are still prevented from using the e-filing system. The BLM believes this change will help eliminate the commenter's concerns about delays associated with submitting multiple waiver applications and, at the same time, addresses the Bureau's concerns about open-ended waiver approvals.

Although the BLM is requiring the submission of this additional information, we do not believe this will result in additional burden hours. If an operator is prevented from using the e-filing system and requests a waiver, the operator likely understands and has a reasonable idea as to what steps it needs to take and the length of time necessary to overcome the challenges that prevent its use of the system. Therefore, assessing those steps will not impose any additional burden hours.

Although the final Order directs the method by which operators must submit an APD or NOS, it does not direct operators to obtain, maintain, retain, or report any more information than what is already required by the existing Onshore Order 1. The BLM recognizes operators may encounter a learning curve as they familiarize themselves with the database system, like any new software system to which users must adapt. For that reason, the BLM intends to adjust the existing 80 hours per response for APDs upwards to 88 hours per response. However, any costs or delays in adapting to the e-filing system will be temporary, and may be subject to a downward adjustment sometime in the future.

The BLM has sponsored multiple outreach strategies and training forums for its AFMSS clients, which should further mitigate the extent of industry's learning curve. These outreach efforts include:

- Easily accessible Internet-based resources, including user-guides, audiovisual modules, user toolkits, and FAQs that are available to operators or their agents, and
- Live trainings provided to users to allow for a more robust discussion with the BLM on how to use the system.

The previously discussed table entitled, "Completed Training Sessions" outlines the locations where the BLM has sponsored these trainings.

The following table itemizes the estimated burdens of APDs, NOSs, and waivers as a result of this Order. In the case of APDs, these burdens are in addition to the 80 burden-hours per response estimated under OMB control number 1004-0137, and the number of responses (3,000 per year) is less than the 5,000 responses currently authorized under OMB control number 1004-0137. Both the number of responses and the burden hours will be adjustments to that control number.

For NOSs and waiver requests, these burdens are new, and will be program changes for control number 1004-0137.

<b>A. Type of Response</b>	<b>B. Number of Responses</b>	<b>C. Hours Per Response</b>	<b>D. Total Hours</b>
Application to Drill or Re-Enter 43 CFR 3162.3-1 and Section III.A. of Onshore Order 1 Form 3160-3	3,000 <sup>5</sup>	8	24,000
Notice of Staking Section III.C. of Onshore Order 1	300 <sup>6</sup>	16	4,800
Waiver Request Section III.I. of Onshore Order 1	150 <sup>7</sup>	4	600
Totals	3,450	28	29,400

#### National Environmental Policy Act

The revisions to the Order do not constitute a major Federal action significantly affecting the quality of the human environment. The BLM has analyzed the revisions to the Order and determined it meets the criteria set forth in 43 CFR 46.210(i) for a Departmental

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<sup>5</sup> This will be an adjustment in the number of responses for APDs in control number 1004-0137. At present, control number 1004-0137 authorizes the BLM to collect 5,000 APDs annually.

<sup>6</sup> Estimated as 10 percent of the roughly 3,000 APDs filed annually.

<sup>7</sup> Estimated as 10 percent of the 1,500 APDs likely to be impacted by the final Order. BLM data show that half of APDs were already e-filed through the WIS.

Categorical Exclusion in that the revisions to the Order are “. . . of an administrative, financial, legal, technical or procedural nature . . . .” Therefore, it is categorically excluded from environmental review under the National Environmental Policy Act, pursuant to 43 CFR 46.205 and 46.210(c) and (i). The BLM also has analyzed this Order to determine if it involves any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement, as set forth in 43 CFR 46.215, and concluded that this Federal action does not involve any extraordinary circumstances.

#### Data Quality Act

In developing this Order, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C 515, 114 Stat. 2763, 2763A-153 to 154).

#### Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, agencies are required to prepare and submit to OMB a Statement of Energy Effects for significant energy actions. This Statement is to include a detailed statement of “any adverse effects of energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies)” for the action and reasonable alternatives and their effects.

Section 4(b) of Executive Order 13211 defines a “significant energy action” as “any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1) (i) that is a significant regulatory action under Executive Order 12866 or any successor Order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action.” The revisions to the Order will not be a significant regulatory action under Executive Order 12866 as they will not have a significant adverse effect on the supply, distribution, or use of energy. The revisions to the Order have also not been designated by the Administrator of OIRA as a significant energy action.

#### Executive Order 13352, Facilitation of Cooperative Conservation

The BLM determined that this Order involves changes to BLM processes. In accordance with Executive Order 13352, this Order will not impede facilitating cooperative conservation. The Order takes appropriate account of and respects the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety.

**Authors**

The principal authors of this final Order are Cathy Cook and Michael Riches, Division of Fluid Minerals, and Bryce Barlan and James Tichenor, Division of Business Management, assisted by Mark Purdy and Jean Sonneman, Division of Regulatory Affairs, Dylan Fuge, Counselor to the Director, and the Department of the Interior's Office of the Solicitor.

**List of Subjects in 43 CFR Part 3160**

Administrative practice and procedure, Government contracts, Indian-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands-mineral resources, Reporting and recordkeeping requirements.

Date: December 21, 2016

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Amanda Leiter  
Acting Assistant Secretary  
Land and Minerals Management



For reasons set out in the preamble, the Bureau of Land Management amends the appendix following the regulatory text of the final rule published in the Federal Register at 72 FR 10308 at 10328 (March 7, 2007), corrected on March 9, 2007 (72 FR 10608), effective March 7, 2007, as follows:

**Note:** This appendix does not appear in the BLM regulations in 43 CFR part 3160.

### **Appendix—Text of Oil and Gas Onshore Order**

Amend the Onshore Oil and Gas Order Number 1 by revising sections III.A, III.C, and III.E, and adding section III.I to read as follows:

#### **Onshore Oil and Gas Order Number 1**

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### **III. Application for Permit to Drill**

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#### **A. Where to File**

On or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], the operator must file an APD and associated documents using the BLM's electronic commerce application for oil and gas permitting and reporting. The operator may contact the local BLM Field Office for information on how to gain access to the electronic commerce application. Prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], an operator may file an

APD and associated documents in the BLM Field Office having jurisdiction over the application.

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### C. Notice of Staking Option

Before filing an APD or Master Development Plan, the operator may file a Notice of Staking with the BLM. The purpose of the Notice of Staking is to provide the operator with an opportunity to gather information to better address site-specific resource concerns while preparing the APD package. This may expedite approval of the APD. On or after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], if an operator chooses to file an NOS, the operator must file the Notice of Staking using the BLM's electronic commerce application for oil and gas permitting and reporting. Attachment I, Sample Format for Notice of Staking, provides the information required for the Notice of Staking option. Prior to [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], an operator may file a Notice of Staking in the BLM Field Office having jurisdiction.

For Federal lands managed by other Surface Managing Agencies, the BLM will provide a copy of the Notice of Staking to the appropriate Surface Managing Agency office. In Alaska, when a subsistence stipulation is part of the lease, the operator must also send a copy of the Notice of Staking to the appropriate Borough and/or Native Regional or Village Corporation.

Within 10 days of receiving the Notice of Staking, the BLM or the FS will review it for required information and schedule a date for the onsite inspection. The onsite inspection will be conducted as soon as weather and other conditions permit. The operator must stake the proposed drill pad and ancillary facilities, and flag new or reconstructed access routes, before the onsite inspection. The staking must include a center stake for the proposed well, two reference stakes, and a flagged access road centerline. Staking activities are considered casual use unless the particular activity is likely to cause more than negligible disturbance or damage. Off-road vehicular use for the purposes of staking is casual use unless, in a particular case, it is likely to cause more than negligible disturbance or damage, or otherwise prohibited.

On non-NFS lands, the BLM will invite the Surface Managing Agency and private surface owner, if applicable, to participate in the onsite inspection. If the surface is privately owned, the operator must furnish to the BLM the name, address, and telephone number of the surface owner if known. All parties who attend the onsite inspection will jointly develop a list of resource concerns that the operator must address in the APD. The operator will be provided a list of these concerns either during the onsite inspection or within 7 days of the onsite inspection. Surface owner concerns will be considered to the extent practical within the law. Failure to submit an APD within 60 days of the onsite inspection will result in the Notice of Staking being returned to the operator.

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#### E. APD Posting and Processing

## 1. Posting

The BLM and the Federal Surface Managing Agency, if other than the BLM, must provide at least 30 days public notice before the BLM may approve an APD or Master Development Plan on a Federal oil and gas lease. Posting is not required for an APD for an Indian oil and gas lease or agreement. The BLM will post information about the APD or Notice of Staking for Federal oil and gas leases to the Internet and in an area of the BLM Field Office having jurisdiction that is readily accessible to the public. Posting to the Internet under this provision will not be required until after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If the surface is managed by a Federal agency other than the BLM, that agency also is required to post the notice for at least 30 days. This would include the BIA where the surface is held in trust but the mineral estate is federally owned. The posting is for informational purposes only and is not an appealable decision. The purpose of the posting is to give any interested party notification that a Federal approval of mineral operations has been requested. The BLM or the FS will not post confidential information.

Reposting of the proposal may be necessary if the posted location of the proposed well is:

- a. Moved to a different quarter-quarter section;
- b. Moved more than 660 feet for lands that are not covered by a Public Land Survey; or
- c. If the BLM or the FS determine that the move is substantial.

## 2. Processing

The timeframes established in this subsection apply to both individual APDs and to the multiple APDs included in Master Development Plans and to leases of Indian minerals as well as leases of Federal minerals.

If there is enough information to begin processing the application, the BLM (and the FS if applicable) will process it up to the point that missing information or uncorrected deficiencies render further processing impractical or impossible.

a. Within 10 days of receiving an application, the BLM (in consultation with the FS if the application concerns NFS lands) will notify the operator as to whether or not the application is complete. The BLM will request additional information and correction of any material submitted, if necessary, in the 10-day notification. If an onsite inspection has not been performed, the applicant will be notified that the application is not complete. Within 10 days of receiving the application, the BLM, in coordination with the operator and Surface Managing Agency, including the private surface owner in the case of split estate minerals, will schedule a date for the onsite inspection (unless the onsite inspection has already been conducted as part of a Notice of Staking). The onsite inspection will be held as soon as practicable based on participants' schedules and weather conditions. The operator will be notified at the onsite inspection of any additional deficiencies that are discovered during the inspection. The operator has 45 days after receiving notice from the BLM to provide any additional information necessary to complete the APD, or the APD may be returned to the operator.

b. Within 30 days after the operator has submitted a complete application, including incorporating any changes that resulted from the onsite inspection, the BLM will:

1. Approve the application, subject to reasonable Conditions of Approval, if the appropriate requirements of the NEPA, National Historic Preservation Act, Endangered Species Act, and other applicable law have been met and, if on NFS lands, the FS has approved the Surface Use Plan of Operations;

2. Notify the operator that it is deferring action on the permit; or

3. Deny the permit if it cannot be approved and the BLM cannot identify any actions that the operator could take that would enable the BLM to issue the permit or the FS to approve the Surface Use Plan of Operations, if applicable.

c. The notice of deferral in paragraph (b)(2) of this section must specify:

1. Any action the operator could take that would enable the BLM (in consultation with the FS if applicable) to issue a final decision on the application. The FS will notify the applicant of any action the applicant could take that would enable the FS to issue a final decision on the Surface Use Plan of Operations on NFS lands. Actions may include, but are not limited to, assistance with:

- (A) Data gathering; and

- (B) Preparing analyses and documents.

2. If applicable, a list of actions that the BLM or the FS need to take before making a final decision on the application, including appropriate analysis under NEPA or other applicable law and a schedule for completing these actions.

d. The operator has 2 years from the date of the notice under paragraph (c)(1) of this section to take the action specified in the notice. If the appropriate analyses required by NEPA, National Historic Preservation Act, Endangered Species Act, and other applicable laws have been completed, the BLM (and the FS if applicable), will make a decision on the permit and the Surface Use Plan of Operations within 10 days of receiving a report from the operator addressing all of the issues or actions specified in the notice under paragraph (c)(1) of this section and certifying that all required actions have been taken. If the operator has not completed the actions specified in the notice within 2 years from the operator's receipt of the paragraph (c)(1) notice, the BLM will deny the permit.

e. For APDs on NFS lands, the decision to approve a Surface Use Plan of Operations or Master Development Plan may be subject to FS appeal procedures. The BLM cannot approve an APD until the appeal of the Surface Use Plan of Operations is resolved.

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#### I. Waiver from Electronic Submission Requirements

The operator may request a waiver from the electronic submission requirement for an APD or Notice of Staking if compliance would cause hardship or the operator is unable to file these documents electronically. In the request, the operator must explain the reason(s) that prevent its use of the electronic system, plans for complying with the electronic submission requirement, and a timeframe for compliance. If the request applies to a particular set of APDs or Notices of Staking, then the request must identify the APDs or Notices of Staking to which the waiver applies. The waiver request is subject to BLM approval. If the request does not specify a particular set of APDs or

Notices of Staking, then the waiver will apply to all submissions made by the operator during the compliance timeframe included as part of the BLM's waiver approval. The BLM will not consider an APD or Notice of Staking that the operator did not submit through the electronic system, unless the BLM approves a waiver.

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